APPENDIX A

No. 35,718

IN THE

SUPREME COURT OF FLORIDA

SEABOARD AIR LINE RAILROAD COMPANY, etc., *Petitioner,*

v.

WARREN G. WILLIAMS, JR., *Respondent.*

On Petition for a Writ of Certiorari to the
District Court of Appeal,
Fourth District

BRIEF OF RESPONDENT

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It is apparent that the decision of the District Court of Appeal for the Fourth District, does not conflict with any other case or cases which have appeared either in the District Courts of Appeal or in the Supreme Court. It can unequivocably be stated that the decision of the Fourth District in the case sub judice does not in any way conflict with those decisions in *Braz* and *Rouse,* as to the Railroad Comparative Negligence Statute, because the law of the *Seven-Up* case was clearly not applicable.

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To allow the Defendant at this time to come in and re-argue the issue of the constitutionality of the Comparative Negligence Statute and its applicability to the case *sub judice is, in effect, a denial of Plaintiff's rights as guaranteed by the due process and equal protection clauses of the Federal Constitution and Section 12, Declaration of Rights, Florida Constitution.* The United States Supreme Court in an unbroken line of cases starting with the *United States* v. *Schooner Peggy,* 5 U.S. 103, 1 Cranch. 103, 2 L.

Ed. 49, to the latest case, *Linkletter* v. *Walker*, 381 U.S. 618, 14 L. Ed. 2d 601, has recognized the principle that when a judgment has been finalized, and is not on direct review, any subsequent court decisions should not be given retroactive effect to this particular class of cases. See 14 L. Ed. 2d 992 et seq.

Chief Justice Hughes in *Chicot Co. Drainage District* v. *Baxter State Bank*, 308 U.S. 371, 84 L. Ed. 329, commented on a prior interpretation as to the *retroactive effect of an unconstitutional* law, stating:

> "It is quite clear, however, that such broad statements as to the effect of a determination of unconstitutionality must be taken with qualifications. The actual existence of a statute, prior to such a determination, is an operative fact and may have consequences which cannot justly be ignored. The task cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to the invalidity may have to be considered in various aspects.—with respect to particular relations, individual and corporate, and particular conduct, private and official. Questions of rights claim have been vested, of status, of prior determination
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> deemed to have finality and acted upon accordingly, of public policy in the light of the nature both of the statute and of its previous application, demand examination." 308 U.S. at 374. (Emphasis supplied)

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